

**CITY OF MORGAN HILL  
JOINT REGULAR REDEVELOPMENT AGENCY  
AND SPECIAL CITY COUNCIL MEETING  
MINUTES – OCTOBER 22, 2003**

**CALL TO ORDER**

Chairperson/Mayor Kennedy called the special meeting to order at 7:03 p.m.

**ROLL CALL ATTENDANCE**

Present: Agency/Council Members Carr, Chang, Sellers, Tate, Chairman/Mayor Kennedy.

**DECLARATION OF POSTING OF AGENDA**

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS**

Mayor Kennedy presented Lisa Ramos, Violence Prevention Specialist, Community Solutions, with a proclamation declaring *October 2003 Domestic Violence Awareness Month*. Ms. Ramos indicated that 165 individuals utilized the battered women's shelter and that there were 308 domestic violence calls made to the police department this year. She stated that domestic violence affects everyone and that it is an issue in our community. It is her hope that there would not be a need for such a proclamation in future years.

Mayor Kennedy indicated that last Friday, he participated in a domestic violence awareness walk in the City of San Jose along with 12 other cities and Santa Clara County to focus attention and awareness on the problem of domestic violence. He indicated that the theme for this year's domestic violence awareness campaign is *Speak Up and Speak Out*. He agreed with Ms. Ramos that it is important to talk to others and get the word out to address and eradicate this sickness that affects many in our communities.

**CITY COUNCIL SUBCOMMITTEE REPORT**

None presented.

**OTHER REPORTS**

City Treasurer Roorda presented the Quarterly Finance & Audit Committee Report in the performance of City funds, particularly the General Fund. He felt that there were signals that the City needs to start listening to because the City is not seeing the revenue coming in as strongly as it would like it to at this

point. He said that the City is seeing some drop in expenses but the City needs to determine if they are in the right areas. He noted that revenues are below budget but are close to what it was at this point in time last year. This can be attributed to the fact that revenue tends to come in lower than budget projections early in the year and then move ahead later in the year. He indicated that property taxes are lower than expected. He stated that staff has shared information that indicates that the City would do better than projected with regards to property taxes over the course of the year. Sales tax is below estimates and that there are other areas that are below estimates, including the motor vehicle in lieu fees as the City did not receive the matching funds from the State the first quarter of the year that is normally expected. This makes up about  $\frac{2}{3}$  of the motor vehicle license fee. This results in the City falling short the first quarter. With the rise in motor vehicle fees back to the levels that they originally were, short of any changes that the new administration in Sacramento may implement, the City should be back on track for the remainder of the year and going into future years. He stated that sales tax is coming in lower than expected. He said that part of this is attributable to the closure of the K-mart store and the lower than projected sales tax revenues coming in to the City. A drop of 13% revenue is an area of concern and something that the City needs to watch carefully as it moves forward.

Mr. Roorda stated that there are reductions on the expenditure side but not enough to offset the lower than expected general fund revenues. He said that spending has been below where the City would have expected based on the budget. Expenditure is showing growth over what was seen last year of approximately 4% in the first quarter. He said that most of the drop in the expenditures comes from police service with an increase in expenditure from administration attributed to expenses that may have come forward from last year. He noted that there has been a drop in public works expenditures. He stated that the Council needs to look carefully and deal with some of the issues that the City is starting to see this year. With a plan to be presented in January 2004, it is his hope that a better course of action will be identified and that the second quarter would provide a better report in terms of revenues.

Council Member Carr stated that he heard earlier today the State Treasurer address the fact that revenues were above what were expected state-wide. He inquired as to the reason Silicon Valley, as a region, is lagging behind the rest of the state in terms of revenue problems.

City Treasurer Roorda responded that he did not have this information by region, but that he or staff would bring this information back to the Council. He felt that the closure of K-Mart skewed revenues toward the down side.

Council Member Carr inquired whether the Finance & Audit Committee would be recommending that the Council take actions at this time or whether the City is in a situation where the report expected early next year about looking at the budget long range is still timely enough to address the areas identified by the City Treasurer as being areas of concern.

City Treasurer Roorda felt that the City may be able to make up some of the sales tax reduction from property tax revenues. He said that this is a time to be cautious and that the City needs to take pause, reviewing the financials carefully as it moves forward. When staff returns with a revised budget plan, the Council would be able to consider a better course of action.

Mayor Kennedy indicated that the Finance & Audit Committee met this evening and that the Finance Director presented a five-year upgraded budget projection which is direr than the previous projections presented. He said that the revenues would grow slightly over the next five-years. However, the expenditures for items such as workers compensation, healthcare costs, PERS, the new fire contract, and some additional recreational costs will be increasing significantly. This is something that the Council will need to look at very carefully. He recommended that the Finance & Audit Committee review the budget and return to the Council with recommendations; working with the City Manager and staff.

City Manager Tewes said that staff committed to the Council to perform a thorough review and come up with a five year strategy. The strategy is to be presented to the Council shortly after the first of the calendar year. He stated his appreciation of the independent review and conclusion that is given by the City Treasurer that there are some signals that the City needs to pay attention to. He said that staff has been raising these signals as well. He noted that the City started with a strong financial position and this is what gives the City the opportunity to perform careful and thoughtful planning so that the City does not react hastily. He felt that the City needs to keep an eye on the budget; indicating that the City has a limited hiring freeze in place in order to control expenditures. However, these have policy implications which have been identified in the budget. He felt that the City has the time to perform the proper budget planning so that the City can provide for prudent management of City's resources. Even though things may be improving at the State level, the City is still lagging for two reasons: 1) Santa Clara County is the slowest growing county in terms of economic growth as it has had a greater job loss than any other county, affecting revenue. 2) The City is receiving revenue today based on economic activity that is six months old. Even though it is being predicted that the economy will be looking up, the City may not see it for awhile.

Mayor Kennedy said that the Finance Director informed the Finance & Audit Committee that he was unable to replace an employee based on the current hiring freeze. He stated that this is a situation that is continuing throughout the City. He felt that it would be important for the Council to know how many staff positions have been lost and how many have not been filled. He noted that the Council and residents/citizens continue to place demands on staff. He felt that it was important to know the load being placed on a reduced staffing level.

City Manager Tewes indicated that the Council has directed that staff test monthly all of its production wells for the existence of perchlorate. He reported that all of the production wells have tested none detect for perchlorate this month. He said that the Condit well that is off line has had intermittent readings of perchlorate. There was a 4.0 parts per billion reading at the Condit well site. This gives staff cause to believe that the Olin site is causing contamination not only to the south, but to the north and east. He indicated that staff would be following up on this.

### **PUBLIC COMMENT**

Chairperson/Mayor Kennedy opened the floor to comments for items not appearing on the agenda. No comments were offered.

## ***Redevelopment Agency Action***

### **PUBLIC HEARINGS:**

**Action:**        *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar 1 and 2 as follows:*

1.        **SEPTEMBER 2003 FINANCE & INVESTMENT REPORT**

**Action:** **Accepted** and **Filed** Report.

2.        **HOUSING REHABILITATION LOAN FOR GONG INVESTMENT GROUP**

**Action:** 1) **Approved** an Additional \$20,000 Home Improvement Loan Under the Agency's Housing Rehabilitation Loan Program for the Gong Investment Group; and 2) **Directed** the Executive Director to Do Everything Necessary to Prepare and Execute Loan Documents or Amend Existing Documents.

## ***City Council Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 3-5, as follows:*

3.        **AGREEMENT WITH THE STROMBOTNE LAW FIRM**

**Action:** **Authorized** the City Manager to Execute an Agreement with the Strombotne Law Firm.

4.        **AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF RUTAN AND TUCKER.**

**Action:** **Authorized** the City Manager to Execute an Amendment to Agreement with the Law Firm of Rutan and Tucker.

5.        **APPROVE CHANGE ORDER FOR LIFT STATION B**

**Action:** **Approved** Change Order in the Amount of \$28,000 to Construct a Retaining Wall Along the Service Road Adjacent to Lift Station B and to Provide Additional Erosion Control Measures to Prevent Silt Runoff From Entering Private Property.

## ***City Council Action***

### **OTHER BUSINESS:**

6.        **COMMUNITY INDOOR RECREATION CENTER (IRC) APPROVAL OF SCHEMATIC DESIGN**

Deputy Director of Public Works Struve presented the staff report. He addressed the senior nutrition as it relates to the IRC. He said that he was encouraged by Council comments at the October 15, 2003

meeting. He said that he would like to go back to the senior and youth committees and conduct workshops to understand what they would like to see in the IRC building in terms of prioritizing space programming. Staff would return to the Council in late November or early December to report on space programming and give the Council an opportunity to direct staff on how it would like to proceed. He walked the Council through a programming evolution and revisions made in terms of square foot allotments and programming spaces. He informed the Council that representatives with Noll and Tam were in attendance to answer any questions that the Council may have. He identified changes made to the site and landscape plans. He indicated that the IRC subcommittee felt that the proposed floor plan and site layout provides a lot more interest and meets the requests made by the various groups. He indicated that there were suggestions from the YMCA and Parks and Recreation Commission to try and include a fourth lap lane in the pool, indicating that a fourth lap lane could not be accommodated because it was cost prohibitive.

Mayor Kennedy inquired whether there was the potential of adding space for a fourth lap lane at some future date.

Council Member Sellers said that the subcommittee tried to address inclusion of a fourth lap lane but that the width of the pool was a big problem. He said that there are significant legal building requirement restrictions associated with pools. He indicated that California pool construction laws have not been updated where other states have updated their laws. Therefore, the City has to go through a process with existing rules to accommodate this facility. He said that there is a possibility to add a fourth lap lane by means of increasing the width or length of the pool.

Mr. Struve addressed the roof element of the building, noting that there are flat and sloped areas in the roof design. He indicated that Noll and Tam was innovative in the design of the building and incorporated a wing roof design. He felt that the slopping roof design captures the feel/movement of the building. He addressed the cost of the building, indicating that the subcommittee had a challenge in meeting the project budget. He stated that it is anticipated that there will be \$15.2 million in construction costs. He said that Noll and Tam has included a design contingency for a project total of \$16 million. If the design contingency is not used, the funds can be applied to the project budget. He felt that it would be wise and prudent to create this contingency to allow flexibility as the City moves toward refining the design. He said that the subcommittee has come up with 12 areas that could reduce costs and not affect program spaces. Staff is looking at taking some of the outlining areas and pulling them back so that they are not so densely landscaped, stubbing out the irrigation system. This achieved a savings of approximately \$155,000. Other cost savings occurred by reducing the exterior wall height and reducing the design contingency by 1%. These three areas resulted in approximately \$270,000 in savings. The remaining 9 items would provide a cost savings of up to \$65,000. He indicated that staff would continue to look for cost saving items. However, there would be an encounter of additional cost increases as the project moves forward as well. He informed the Council that in addition to Noll and Tams' cost estimator, staff contracted with Nova Partners to provide an independent cost estimate. He stated that in their review of Noll and Tam's cost, Noll and Tam's cost was found to be slightly under their report. Nova Partners indicated that this was attributed to the fact that they did not start with an independent cost study and that it was more of a cost validation. It is staff's belief that the cost estimate was accurate.

Mr. Struve requested that the Council direct staff regarding LEEDS certification. He said that staff is confident that the City can attain a certification level for the building at no or very little cost. He said that the City may not be able to be completely commissioned or receive documents stating that this is a certified building. However, the building would be in substantial compliance with everything that LEEDS certification would require, attaining enough points to do so.

Janet Tam addressed the design/layout of the building and landscape design. She indicated that the building was designed to have a strong presence along Edmundson Avenue and that the swimming pool is to be located on the south side of the building. She stated that the design incorporates a lush landscape around the building to create an oasis concept. She indicated that a lot of the outdoor space has been linked together from the south side all around to the north side of the building with a nice entry courtyard on the north side of building. The building was designed to allow the senior portion to have its own identity. She indicated that the building size is at approximately 51,200 square feet. She walked the Council through the interior program spacing of the building. She indicated that the gymnasium will have a main court of 50' x 84' in size and two smaller cross courts each at a size of 45' x 74'. She indicated that the size of this particular gymnasium is a little smaller than a league-sized facility. She stated that the climbing wall would need to be fitted in at some future date in the lobby, at the end of the building, or as a portion of an expansion of the active wing area. She indicated that in order to meet budget, it was necessary to cut more areas. She identified areas where the building could be expanded in the future. She stated that the primary material to be used is concrete masonry block because of its durability and the fact that the indoor pool requires material that can get wet and not damage easily. It is proposed to use light colored roofing material in order to attain some sustainable building/LEEDS credits. She indicated that there is a 35-foot height limit in this zoning district, indicating that a variance would be applied for through the planning department. She indicated that the highest point for the gymnasium is at 40-45 feet. She felt that the use justifies the height, noting that a major slide is proposed at 17'6" to the landing and requires another 8' for head height.

Mayor Kennedy felt that the building could be higher as the structure is setback from surrounding areas and not build up against other buildings. He stated his support for a height variance so that the City's zoning standards does not restrict the beauty of the building.

Ms. Tam addressed the cost estimate of the IRC project. She stated that a 10% design contingency has been included and is part of the construction cost. She said that at this early point in time of the design, the contingency needs to be held for things that have not yet been designed that will come out of the design process. As the design continues toward construction documentation several months from now, the design contingency will start to fall away as the elements start to get defined more clearly. Also, included is a 2% escalation cost. She said that the design team has been trying to meet the current project budget of \$15.2 million, noting that the budget is tight. In order to maintain the project goals, the City needs to be cognizant of any scope increases that it might want to undertake. She stated that the proposed reductions from the October 10, 2003 cost estimates do not sacrifice programming. The cost reductions come from either site reductions or architectural items that will not hurt the function of the building.

Ms. Tam also addressed the Leadership in Energy and Efficiency Design (LEEDs), indicating that there are four levels of certification. She stated that a workshop was held at the beginning of the design

process to help identify the possible points that could be attained for this particular project. Identified at that workshop were approximately 30 “yes” points and 20 “maybe” points that could be achieved fairly easily. She said that the design team could work on the design fees that would be required in the documentation within the contract allowance. However, should the project go toward silver, it will be necessary to add professional fees and that the contract would require additional documentation fees. This may result in the construction costs increasing up to 3% (\$450,000). She felt that there may be minor increase in cost that could be absorbed by the project in order to achieve certification. She said that the payback for achieving certification and silver rating is that the City would have annual energy savings and that it would have a better understanding of monitoring and operating the building. There could be less building maintenance if the right materials are chosen and the equipment will run more optimally. She said that the benefits cannot be assessed until all of the points are narrowed down and the City determines what points it wants to achieve. She recommended that the City Council move toward certification, receiving a plaque for the building. This plaque does result in documentation fees, has commission requirements and can be achieved within the contract allowance. The Council can also choose to follow the intent of LEEDS. As an alternative, the City could proceed with everything that has to be done and commission the building, but not go through the documentation process. She requested Council direction as to the way the IRC project should proceed with LEED certification.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Mayor Pro Tempore Chang felt that the design was fantastic. She noted that the design team would be returning with the color scheme as she would like to review the colors to be used.

Council Member Tate said that as recently as June 2003 he was pressing hard to have the schedule accelerated, meeting a 2005 completion date. He stated that he has been thinking about the IRC schedule intensely this weekend. He said that he was surprised that the Council had a 3-2 vote on the incorporation of the nutrition program at the IRC. This vote reinforced some of his thoughts. He felt that it would be better not to have things separated, becoming more expensive. It also brought to mind the things that he has heard from the Senior Advisory Committee where they are stating that they are not getting any increase in space. The Council heard that seniors are receiving free aerobics at this time but that they will have to pay for an aerobics program at the IRC. The Council also heard a lot about the differences between programming spaces and programming activities. He felt that the Council needs to slow down the process. He concurred with staff that the City needs to conduct workshops with the seniors and youth of the community. He stated that he would like to have the entire Senior and Youth Advisory Committees in attendance stating their support of the design and programming as he wants to make sure that it is the right facility for the youth and seniors of the community. He said that he was impressed with the design, given the constraints the City has but that he was not sure if it was the right design for the activities to be provided.

Mayor Kennedy indicated that he attended the Parks & Recreation Commission meeting held last night. He also met with the chairperson of the Senior Advisory Committee and will be meeting with the chairperson of the Youth Advisory Committee. He stated that the Parks & Recreation Commission had a discussion on their agenda about interim/temporary programs and facilities for both seniors and youth. In looking back over the Parks and Recreation Master Plan, he noticed that the City’s programming is based around facilities. He felt that the City may have headed in the wrong direction in this case. He felt

that there was a lot more the City can do with temporary/interim programs that can be incorporated contingent on having the budget resources to do so. He said that one of the problems is determining what exactly is needed. Rather than having the facility determining the programs, he felt that the programs should be determining the facility. The question before the Council is whether it should approve the schematic design in order to allow the design team to move forward with design development. Any action not to move forward would delay the project. He inquired how much flexibility the Council has should it be determined that different space is needed to make a mid course change.

Ms. Tam said that the design team was prepared to take the area that is available for seniors and youth and reconfigure some of the space within the same foot print to see what will work. It is her hope to be able to meet with youths and seniors to understand the space they would like to have. She indicated that the design team continues to develop and refine the floor plans. She felt that there was some flexibility, within reason, that the design team can try to accommodate. It is not recommended that the foot print or the gross area be increased because it would affect the budget. The design team has allocated a certain amount of area to be used and that they would like to work within these parameters.

Mayor Kennedy felt that there was some flexibility within the central core of the design regarding relocating walls or perhaps extending some of the space.

Ms. Tam indicated that if areas are increased, there will be an increase in construction costs. The design team can continue to work on the floor plan as there is some flexibility. She said that the only flexible partition is located in the multi purpose room where there is a moveable wall that divides the space into two rooms. Otherwise, everything is pretty fixed with hard walls.

Council Member Tate stated that he has opinions on space needs but that he would like to know what the youth and seniors opinions are as well. He said that one mistake made with the Community & Cultural Center was the fact that the City cut back the size of the Hiram Morgan Hill Room. In looking at the IRC space, he noted that it is not any larger than the current senior center and that there is no room for expansion proposed. He did not believe that it made sense that the seniors should be confined in a brand new facility. It has always been his belief that this would be a multi generational center. He felt that it would be tragic not to include a multi generational computer room/shared facility that the City is trying to accomplish with the new IRC. He felt that the seniors and youth need to provide the Council with their input.

Council Member Sellers said that the programming thinking, going into this process, started 7-8 years ago with the Visioning process. Since that time, a number of meetings have been held that included community meetings and staff discussion about the programming issues. He felt that the discussions have been fairly exhaustive. He stated that the architects spent a lot of time figuring out the specific programming needs as they need to be understood before drawing a single room. He noted that this process included the architects, staff and community input, particularly from the Senior Advisory Committee and Parks & Recreation Commission. He said that he shared a lot of the same concerns that have been raised and so do the commissions and subcommittee. However, everyone feels comfortable that the decisions yet to be made can be made without delaying the process this evening. He noted that the design did not include a room that was not restricted to some degree. He said that two things were



done to address this issue: 1) maintain the flexibility in the spacing requirements; and 2) figure out how to allow for future expansion. He would support an effort to try to figure out a way to expand the multi purpose room if the funds could be found to do so. He felt that the facility would provide adequate space as it is in line with much larger communities that are building similar new facilities such as Milpitas. He said that he has always considered the possibility of a flexible interactive computer facility. He would like to have the ability to move facilities or programming to various spaces and retain flexibility to make sure that programming needs are met through extensive involvement of the seniors as well as active seniors. He stated that he shares a lot of the concerns that have been expressed but felt that the City has a way of meeting these concerns and addressing issues. He remembered the difficult discussion the Council had when it agreed to reduce the size of the Hiram Morgan Hill Room but that the Council allowed for expansion through the rose garden when funding becomes available. He felt that the Council has enough information to proceed this evening.

City Manager Tewes said that one of the reasons that staff included an exhibit in the packet that showed the evolution of the spaces of the IRC was to let the Council know that the design has always been built from the programming spaces. He said that the first time that staff presented to the City Council the results of a series of workshops with the youth and the seniors was November 20, 2001 about the things they would like to see in the building. He identified three constraints associated with the programming/space of the facility: 1) the amount of capital dollars available to build the facility, 2) Council wanting to maximize the revenue and cost recovery potential for this facility, and 3) avoid duplication of programming in this facility that have been incorporated in other city facilities in existence or being planned. He said that the project evolved with these constraints in mind. He stated that he was proud of the design team as they have taken to heart the Council's budget constraint guidelines. He said that staff and the design team do not want to come back and ask for more money. As a result, decisions had to be made. He said that in the series of evolution, the Council can see how decisions were made. He said that the decisions were made with the understanding that they affect the activities that could occur in the facility. He indicated that staff started the design with comments from youths and seniors.

Ms. Tam identified areas of possible expansion for the gymnasium and aerobics floor. She felt that it would be possible to expand the multi purpose room in a different direction.

Mayor Kennedy inquired whether the City should require that the architect design, in their drawings, expansion capabilities. This would allow reservation of space but that it may require changes to the structural design to be able to accommodate future expansion.

Council Member Sellers felt that the dotted lines and landscape layout could accommodate future expansion capabilities as long as the structural design can accommodate expansion.

Ms. Tam indicated that the design team has been asked all along to consider how the building could expand, considering important criteria. She referred to the site plan, noting that there is a lot to fit on the site, including parking spaces. The design team did not want to sacrifice outdoor space for the extension of indoor space. She felt that there is a certain amount of expansion that is possible and that the design team can clearly define how much expansion would make sense.

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Mayor Kennedy said that in looking at the model, it would be difficult to expand to the west based on the current design because that is the location of the high arching roof.

Ms. Tam said that the kitchen may need to be shifted to another location so that the building can be expanded. One possibility would be to change the direction of the roof so that it is parallel to the other roofs to allow extrusion of the roof form toward the west. In response to Council Member Carr's question, Ms. Tam indicated that return on investment drives the square footage of some of the rooms such of the fitness and aerobics room. Also, the function of the rooms determines the proportions of the spaces and the minimum size to get the correct number of individuals who need to attend the programming activities. She indicated that the fitness and aerobics room have been minimized. She said that the fitness room is one space that could easily be expanded as it is a popular space.

Council Member Sellers said that the fitness room needs to be large enough to accommodate enough individuals into the space and has to be attractive in order for individuals to utilize the facility. He stated that there is an element where the City is trying to make the facility pay for itself. It is not just the size and the critical mass that is being created, but that it is the overall facility that would attract individuals.

Mayor Pro Tempore Chang stated that it was her belief that the Council wanted to increase the space for seniors and not include aquatics at this site.

Mayor Kennedy felt that the size/space at the east end (maintenance/receiving area) of the facility could be reduced and increase the size of the space on the west end.

Ms. Tam said that it may be possible to move a wall over and reduce the east end of the facility as long as the configuration of the space is workable and functional for delivery and maintenance. She noted that reducing the space would only equate to 200 square feet of extra space. She felt that as the project develops into the next phase, the design team can start looking at what goes into spaces. In response to Council Member Carr's inquiry, Ms. Tam indicated that the gymnasium would be equipped and stripped for volleyball and basketball. She informed the Council that three volleyball courts and a badminton court are proposed.

Mayor Kennedy stated that he liked the overall design and felt that it has come a long way. He requested that flexibility be incorporated into the design on the side where the senior and youth spaces are to be located.

Council Member Sellers stated that he was encouraged by Council discussion as a lot of the concerns and issues raised this evening are issues that have been brought up by the subcommittee. He said that the City is continuing to work toward addressing these concerns and issues. He stated that the Council would be approving a step this evening but that a big step would be coming up that would require all Council members to get out and hear back from individuals in order to incorporate recommendations. He said that he was looking forward toward figuring a way to create expansion of the multi purpose room as it is a facility that needs to provide greater accommodation. He indicated that the IRC subcommittee will be working hard to incorporate a lot of the suggestions before returning to the Council.

Council Member Carr said that he was in the 3-2 losing end of the vote as he did not feel that he was in a position to make a decision on the nutrition program at the time. He stated that he was not opposed to the nutrition program being at the new center, but that he did not feel that he was in a position to make that decision. In reviewing exhibit A, he noticed that there has been an amount of work that has gone into the IRC and that the Council has solicited input from the different committees. He did not understand how each of the meetings with the different committees have been built into the existing program. He said that he remembers clearly two things that the youth requested be included in the facility: a climbing wall and a juice bar. He noted that they are not incorporated in the latest design revision. He said that he needs to understand how the information is incorporated into the plan following conclusion of workshops and discussions with committees. He did not believe that he was hearing enough from the different bodies about what their interests are.

Mr. Struve requested that staff be allowed to meet with the youth and senior committees to review programming and activities, reporting to the Council in December about their comments and advise the Council how changes may affect the timeline.

Ms. Tam said that if the Council does not feel comfortable with the direction of the design, the design team can continue to work on the plan. She said that there is a lot that needs to be done in terms of studying building systems and assemblies.

Council Member Carr acknowledged that a lot of subcommittee meetings and discussions are being held. However, not being a part of these discussions, he did not understand how the revisions changed and how they are being done to meet the needs the Council is hearing from the community. As he has not been involved in the discussions, he did not believe that he has the information needed to make decisions on the design.

Council Member Sellers suggested that Council member(s) attend commission and/or committee meetings.

Mr. Struve indicated that the Parks and Recreation Commission requested a special workshop be held on October 2 and October 10 relating to the IRC. The Parks and Recreation Commission has provided staff input, indicating that they were pleased with the layout and were supportive of the design at the meeting held last night (October 21).

Council Member Sellers noted that some of the Colorado design was incorporated into the indoor recreation center design.

**Action:** *Council Member Sellers made a motion, seconded by Council Member Chang to **Approve** Subcommittee Recommendations for (A) Schematic Design and (B) Approval to attain a LEEDS "Certification" Level; and **Directed** Staff and Architect to Begin Design Development Drawings with the items recommended by the Council Members this evening.*

Council Member Carr stated that he was encouraged by the plan and the work that staff stated would be taking place over the next month. He stated that he was willing to move forward this evening knowing

that the Council still has an opportunity in December to conduct further review and hear specific comments from the senior advisory committee, youth advisory committee and the parks & recreation commission.

Council Member Tate stated that he would not be supporting the motion as he does not see the facility opening until 2006 on the fastest track that the City can be on. He stated that he was not sure that the Council would be receiving all the answers in the next couple of months to state what the requirements for the facility should be and how the City will be able to afford it. Therefore, he could not support the motion.

Mayor Pro Tempore Chang indicated that throughout the process, Mr. Struve has exercised a lot of caution. He talked to all parties, including committee members. She stated that she was impressed with the process and complimented Mr. Struve on the process.

Mayor Kennedy called for the question.

**Vote:**            *The motion carried 4-1 with Council Member Tate voting no.*

## **7.        DISCUSSION REGARDING TOBACCO PREVENTION**

Council Services & Records Manager Torrez presented the staff report.

Mayor Kennedy inquired whether it was Mr. Murillo's concern that the City has an ordinance in place, and that there are many instances where the ordinance is not being followed or that there may be some cases where the City's ordinance might need to be strengthened.

Mayor Kennedy opened the floor to public comment.

Mr. Murillo requested that the City enforce and strengthen the City's tobacco ordinance. He stated that the current window advertisement ordinance stipulates a limit of 25%, noting that a survey shows that over half of the businesses in Morgan Hill exceed the 25% limitation. He said that the recommendations of advocates were to enforce what the City has on the books. He indicated that other communities have gone further and strengthened ordinances by reducing the maximum amount of window advertisement allowed. The City of Saratoga prohibits window advertisement in their historical commercial areas. It is the idea to avoid blight from all forms of advertisement and to increase safety in terms of law enforcement of being able to see into stores. Some cities have banned certain types of signs such as portable signs attached to poles or freestanding signs. The City could consider licensure as a way to have an annual source of revenue used to conduct enforcement and education. He stated that his agency has found that communities that have a regular enforcement presence, such as undercover youth stings, have the lowest youth purchase rates as the merchants know that the youth might be decoys. He said that voluntary compliance does not seem to work.

No further comments were offered.

Council Member Tate noted that with the City's current budget situation includes a hiring freeze. The

Council wants to ask the police department to enforce the laws in place. However, this would take officer power to do so. He said that Mr. Murillo raised a suggestion of paying for the enforcement by a licensing approach. With the hiring freeze, the City may be able to pay some overtime to conduct enforcement. He felt that the licensure aspect was a worthwhile suggestion, asking the police department for a recommendation on whether they see a way of making this work (e.g., conduct sting operations, and enforcement of sign coverage, etc.).

Mayor Kennedy indicated that Delores Alvarado requested certain actions be taken to enforce the current laws at the October 1 meeting. He felt that all her recommendations would be good things to do. With respect to portable signs, he noted that the City allows A-frame signs in the downtown area. He did not believe that the City would want to allow the A-frame signs to be used for tobacco display.

City Attorney Leichter informed the Council that the easiest approach would be to look at strengthening code enforcement efforts and enforce the current ordinance(s). She was not sure that the City has the police or prosecutorial staff available to prosecute violations at this time given the City's budget constraints. She said that the City could look at devoting code enforcement efforts and enforce the current ordinance if this is the Council's desire.

City Manager Tewes indicated that the City enforces codes based on complaints received. As Mr. Murillo has submitted a complaint, staff would follow up with the issues that he has brought to the City's attention.

In response to Council Member Tate's inquiry, City Attorney Leichter indicated that the City could look into the idea of licensing as a funding mechanism to be able to do more. She said that one aspect that she needs to investigate is whether the City can devote the funds toward code enforcement or to criminal enforcement. It was her belief that the funds from licensing would need to be deposited into the general fund and could not be a targeted revenue source. Staff can investigate how much revenue licensing would generate and whether it would help offset increased code enforcement costs.

**Action:**        *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Chang, the City Council unanimously (5-0) **Directed** staff to return with costs associated with options to address Tobacco prevention.*

Council Member Sellers noted that the City has a legislative subcommittee in place that can be consulted.

City Manager Tewes conveyed to the Council that had it not been for this presentation, it would not be at the top of the City's priorities. If the Council wants to move this to the top of the priority list, he requested that the Council let staff know this fact. Otherwise, staff would not return to the Council for a couple of months.

Mr. Murillo mentioned that there is a legal center operated by the state for communities who want to develop ordinances to counter tobacco entitled TALC.

Mayor Kennedy inquired whether there were any funds available from First 5 for tobacco prevention

efforts. He requested that staff look into funding available that can be used toward this effort. He felt that the tobacco initiative should provide funding to restrict access of tobacco to children and felt that the City should be able to tap into some of these funds.

City Attorney Leichter indicated that she receives the TALC information and that she is aware of the resources available. She said that staff needs to analyze the impact upon staff from implementation of these ordinances.

Council Member Carr inquired whether there were changes in the time of year where incidents increase in youth purchase of tobacco.

Mr. Murillo did not know the answer to Council Member Carr's question. He said that data received are tied to enforcement activities. He said that there is a certain level of incidents where youth's purchase/attempt to purchase tobacco. However, there has been an improvement since Proposition 99 passed in the early 1990s.

## ***Redevelopment Agency and City Council Action***

### **OTHER BUSINESS:**

#### **8. FINANCIAL ASSISTANCE TO JOHNSON LUMBER**

Director of Business Assistance and Housing Services Toy presented the staff report. He informed the Council/Agency Board that the economic development subcommittee (EDS) has reviewed the proposal and is recommending a loan of \$230,000 to Johnson Lumber to help fill their financial expansion gap. He identified the key terms of the loan. With Council/Agency Board approval, staff would prepare the necessary documents and return with the documents at a future meeting for Council/Agency consideration.

Executive Director/City Manager Tewes said that the EDS wanted to make sure that the City was not providing a subsidy for something that would occur anyway. The EDS knew that with the opening of Home Depot, the City was going to get increased sales tax attributed to home improvement sales. He said that it was the objective to gain something for the public which is the net increase in total sales.

Agency/Council Member Sellers noted that the staff report and all material presented state that the loan would be deferred for 10-years. He inquired whether the loan would be repaid on sales tax increases.

Mr. Toy clarified that the loan is not being deferred as Mr. Johnson is repaying the loan. He said that it is conceivable that should Johnson Lumber not meet the thresholds, repayment of the loan would not be made over the 10-year period and would be repaid at the end of the 10-year period.

Agency/Council Member Sellers stated that he was anxious about the fact that the City is adding a big new retailer that will hopefully fill the home improvement sales gap. He felt that competition would be good. He stated that there have been previous discussions this year about economic development and regenerating these funds. He noted that 10-years is pretty far out. He inquired if there was a possibility

of shortening the loan repayment period. He felt that the loan would give Johnson Lumber a large jump start and a huge expansion of their facility. He inquired whether making available a public document on how much Johnson Lumber is making every year, would be a propriety issue. He inquired whether there were any legal issues concerning this.

Executive Director/City Manager Tewes responded that this is a consideration that Mr. Johnson would need to make as this is the only basis in which the City can make the calculations.

Mr. Toy said that he understands that Johnson Lumber is maxed out in terms of their financing ability. He did not know what the lender's capacity for this loan would be should the loan period be shortened. He indicated that staff could ask if the loan period could be shortened.

Agency/Council Member Tate said that the loan was based on a 10-year model. The subcommittee identified 10-years as the amount of time that it wants to look at in terms of how much additional revenue and sales would be generated given Johnson Lumber's projections. He said that Johnson Lumber's need was \$300,000. The subcommittee wanted to maximize what the City could give them to help cover this amount. Therefore, the subcommittee had to look at the full 10-year loan period to get to \$230,000. The subcommittee did not want to extend the term of the loan for the very reasons addressed by Agency/Council Sellers. However, a shorter loan term would not give Mr. Johnson what he needs to proceed with construction.

Agency/Council Member Sellers inquired whether 2-5 years from now Mr. Johnson's position would have strengthened to a degree that he could find other sources of revenue. He inquired whether this was something that the Agency/Council may want to include in the loan documents, providing Mr. Johnson with a bonus(es) if he is able to find other sources and have the ability to repay the loan sooner.

Agency/Council Member Tate said that the City needs to find incentives in order to encourage repayment of the loan sooner.

Agency/Council Member Carr inquired whether an early payoff would result in a lesser payoff (city would receive less money in the long run). He said that repayment could be calculated based upon inflation rates and what the City would lose over 10-years.

**Action:** *On a motion by Agency/Council Member Tate and seconded by Agency/Council Member Carr, the Agency/Council unanimously (5-0) **Authorized** the City Manager/Executive Director to Negotiate and Prepare the Necessary Agreements with Johnson Lumber to Provide for 1) The Sharing of Sales Tax Revenue Based on Performance; 2) A Double Facade Grant, and 3) The Commitment to Install any Required Sound Wall/Fence Along the Future Extension of Butterfield Boulevard with the understanding that the economic development subcommittee is to work with Mr. Johnson on a shorter repayment period with the use of incentives.*

## **9. LEASE WITH THE CALIFORNIA YOUTH SOCCER ASSOCIATION (CYSA)**

Director of Business Assistance and Housing Services Toy presented the staff report.

Agency/Council Member Chang inquired whether the Council read in the Gilroy Dispatch three weeks ago about Gavilan College thanking the City of Morgan Hill for its assistance in the use of the fields. She thanked staff for this assistance.

Chairman/Mayor Kennedy indicated that originally, Gavilan College was turned down by the CYSA organization for the use of the fields. The City intervened and helped facilitate resolution.

Agency/Council Member Sellers said that in previous discussions with CYSA he recalled that they expressed concern with shared use of the facility. He recommended that shared use be strongly encouraged in subsequent negotiations. He inquired whether shared use would be a deal breaker for the CYSA or would this be something that they would be flexible with.

Mr. Toy responded that CYSA indicated that they would be open to a shared use facility. However, they do not want to impact the scheduling of the facility. He felt that allowing Gavilan College to use the fields demonstrates their interest in being a good community user.

Agency/Council Member Sellers noted that the Pop Warner football league is in search of a facility, noting that these are different constraints and different types of uses. He felt that these are the type of creative uses where the facility would generate income, maximizing the use of the facility for the community.

Chairman/Mayor Kennedy noted that the CYSA has leased the fields to a flag football league for a 2-3 day weekend. He felt that Pop Warner football may be a good possibility or other programs similar to this. He inquired whether the current rent was adequate. He indicated that staff included CYSA's financial statements as part of the staff report. He noted that staff has indicated that the CYSA organization could not afford to pay more rent for the use of the facility.

Mr. Toy said that from their financial statements, it shows that the CYSA is losing money each year on the soccer complex.

Vice-chair/Mayor Pro Tempore Chang felt that the soccer fields contribute something different to the City; soccer tournaments assist the hotel industry to survive and contribute to the City's Transient Occupancy Tax.

Chairman/Mayor Kennedy felt that it was important that the City allows local teams and programs to use the facility. He said that the rent is not a big issue as the CYSA hosts good tournaments that attract a lot of visitors who leave their tax dollars and spend some of their money in the community. He stated that the CYSA provides a good benefit to the City. However, he felt that it was important that the City allow local teams and programs to use the facility.

Executive Director/City Manager Tewes said that is a CYSA concept that the soccer complex is to be kept pristine Monday through Friday and used only on weekends. One of the reasons the regional soccer facility is attractive is attributed to the fact that the CYSA does not allow use of the facility during the day. Over the years, this has caused a lot of consternation by local groups. Recently, in order



for the CYSA to generate revenue, they have been entering into occasional agreements when it is felt that the user would not damage the fields. He said that it would be important for staff to get clarity about whether the Council would allow renting out of the facility. As written, the lease does not suggest that the CYSA can sublet the facility. He said that staff needs to know whether the Council would allow the CYSA to change the model of how they use the facility. Would the City allow CYSA to enter into agreements with local groups?

Agency Counsel/City Attorney Leichter expressed a legal concern as the lease prohibits assignment and subletting. She noted that the CYSA has apparently been assigning/subletting to other groups. Where the Council may want to allow this as a policy, the City has to have the appropriate legal controls in place as the CYSA is using City property and the City needs the proper indemnification insurance, etc.

Agency/Council Member Sellers indicated that the City will not be increasing the rent and is supportive of CYSA using the facility for another year. However, CYSA needs to be encouraged to allow the use of the facility by other community groups.

Chairman/Mayor Kennedy said that he has received several complaints about maintenance; one about the parking lot being muddy/flooded and another about one of the trailers/modular buildings being in a dilapidated and run down manner.

Executive Director/City Manager Tewes said that when staff passes on complaints about maintenance issue to the CYSA group, they try to address these issues.

Agency/Council Member Sellers felt that it was a blessing to the City that the CYSA was requesting the use of the facility for another year. He said that he was anxious about the time when the facility would be sitting vacant. He noted that the Council has not laid the ground work for subsequent/interim uses. He indicated that there is \$2 million that has been set aside for subsequent uses. He requested that staff notify the Parks & Recreation Commission that the City is looking at renegotiating the lease with the CYSA organization but that it would expire in 12 months. The Agency/Council would like to see a plan for the facility in an appropriate amount of time for subsequent uses. He stated that when he was first elected to the City Council, a presentation was made by a private entity who wanted to proceed in using public facilities, making them profitably. This private entity would install improvements and do everything for the City in exchange for the use of the facility. He felt that this entity still exists. He recommended that the Parks & Recreation Commission look at profit and non profits in order to identify ideas for the use of the facility a year from now.

Chairman/Mayor Kennedy felt that Agency/Council Member Sellers raised a good suggestion.

Vice-chair/Mayor Pro Tempore Chang also agreed that this was a good idea. She inquired as to the status of the Sobrato fields.

Executive Director/City Manager Tewes noted that the City Council/Redevelopment Agency has appropriated \$1 million out of the \$147 million to facilitate the development of a regional soccer complex at an alternative site within the Morgan Hill area. He said that the alternative site appears to be immediately adjacent to the Sobrato high school site. He said that staff and the Council of the City of

San Jose have indicated their support for the soccer complex project. They intend to conduct an environmental impact report which they believe is necessary because they intend to allow access from Monterey Road into the facility. They would also allow temporary uses in the greenbelt area such as restrooms, coaches/team facilities. There is discussion about accommodating 17-fields with funding that would include the City's \$1 million and that the CYSA would need to come up with additional funding. He said that the City of San Jose intends to fund the EIR. It is their hope to have a plan for a lease with CYSA by mid-2004.

Chairman/Mayor Kennedy felt that this was a good timeline to pass on to the Parks & Recreation Commission so that they look ahead for a sports complex as the CYSA moves out.

**Action:** *By consensus, the Council **provided** staff with parameters, as listed above, for Negotiating a Lease Extension with CYSA to Continue Using the Future Location of the Sports Complex as a CYSA Regional Soccer Complex.*

**10. ENDORSEMENT OF THE VALLEY TRANSPORTATION AGENCY'S (VTA) COMMUNITY DESIGN AND TRANSPORTATION PROGRAM AND BEST PRACTICES MANUAL – Resolution No. 5728**

Planning Manager Rowe presented the staff report. He indicated that endorsement of the plan does not require the City to implement each and every principal that is conveyed in the Best Practices Manual. However, to the extent that the City incorporates these principles into the City's transportation land use plan, the City would have competitive advantages over other projects that do not. In order to encourage cities to participate in the plan, VTA has linked the program to several grant funding programs that it administers.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Mayor Kennedy stated that these documents have been presented several times to the VTA policy advisory committee. He felt that they were excellent documents. He noted that the Planning Commission voted 6-1 to recommend Council approval.

Planning Manager Rowe informed the Council that the one Planning Commissioner who voted against the motion felt that it was an excellent document and that he was supportive about everything contained in the document. However, he had some reservations about the City's endorsement of the document and giving up some local authority. He said that the amended resolution before the Council makes it clear that the City is agreeing to consider the principals and to the extent feasible; will incorporate them into the City's planning practices. He noted that this is a voluntary commitment on the City's part. In response to Chairman/Mayor Kennedy's inquiry, Mr. Rowe indicated that should the City ignore some of the principals contained in the plan in the application submitted for funding, it may jeopardize the City's ability to secure funding. However, in terms of the action being taken this evening with the amendment to the resolution, it would not jeopardize the City's eligibility to participate in VTA's grant funding program.

**Action:** *On a motion by Agency/Council Member Tate and seconded by Agency/Council Member*

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*Sellers, the Agency/Council Board unanimously (5-0) **Adopted** Resolution No.5728, Endorsing VTA's Community Design and Transportation Program and its Manual of Best Practices for Integrating Transportation and Land Use, as amended.*

### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

### ***Redevelopment Agency and City Council Action***

### **CLOSED SESSIONS:**

Agency Counsel/City Attorney Leichter announced that there was no need to adjourn to closed session.

#### **1.**

#### **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	2

### **ADJOURNMENT**

There being no further business, Chairperson/Mayor Kennedy adjourned the meeting at 9:48 p.m.

### **MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, AGENCY SECRETARY/CITY CLERK**